

Court File No. BK-25-03267656-0032
Estate No. 32-3267656

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C., 1985, C.
B-3, AS AMENDED**

**IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF 3MOTIONAI INC. FILED IN THE
CITY OF MISSISSAUGA, IN THE PROVINCE OF
ONTARIO**

FACTUM OF 3MOTIONAI INC.

(Motion for Initial Order and SISP Order returnable on October 1, 2025 at 12 Noon)

September 30, 2025

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TO: THE SERVICE LIST

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PART I – OVERVIEW

1. On September 3, 2025, 3MotionAI Inc. (“**3Motion**”) filed a notice of intention to make a proposal (the “**NOI**”) pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”). TDB Restructuring Limited (“**TDB**”) was named proposal trustee (the “**Proposal Trustee**”) in 3Motion’s proposal proceeding (the “**Proposal Proceedings**”).
2. 3Motion with the support of its interim lender and the Proposal Trustee seeks four principal orders.
3. First, an initial proposal order (the “**Initial Order**”), for, among other things, the following:
 - (a) if necessary, abridging the time for service and filing of the notice of motion and the motion record, validating service of the notice of motion and the motion record so that this motion is properly returnable on October 1, 2025, and dispensing with further service thereof;
 - (b) extending the time for 3Motion to file proposals under section 50.4(9) of the BIA by 45 days to and including November 14, 2025;
 - (c) approving the first report of the Proposal Trustee dated on or about September 29, 2025 to be filed separately with the Court (the “**First Report**”), and the activities of the Proposal Trustee set out therein;
 - (d) enhancing the scope of the power and authority of the Proposal Trustee, as set out herein, so as to enable the Proposal Trustee to fully administer the SISP (as defined below) and to monitor and oversee the operations of 3Motion’s business enterprise through the Proposal Proceeding;
 - (e) authorizing 3Motion to enter into the interim financing term sheet (the “**DIP Term Sheet**”) with West Tech Fitness Group Inc. (“**West Tech**”) as interim lender, and granting super-priority charges over 3 Motions property assets and undertaking ranking in the order they appear below: appear below:
 - i. granting West Tech a super priority charge (the “**DIP Charge**”) in an amount not to exceed \$750,000.00 plus interest, fees and expenses, against 3Motion’s property, assets and undertakings as security for all of 3Motion’s

obligations to West Tech under the DIP Term Sheet;

- ii. granting a super-priority charge against 3Motion's property, assets and undertakings in an amount not to exceed \$500,000 in favour of 3Motion's legal counsel, the Proposal Trustee and the Proposal Trustee's legal counsel as security for the professional fees and disbursements of counsel to 3Motion, the Proposal Trustee and counsel to the Proposal Trustee (the "**Administration Charge**");
 - iii. granting an indemnity for post filing liabilities to the directors and officers of 3Motion (the "**D&O Indemnity**") secured by a charge against 3Motion's property, assets and undertakings in an amount not to exceed \$150,000 in favour of 3Motion's directors and officers, to secure 3Motion's obligation to indemnify the directors for certain potential liabilities (the "**D&O Charge**");
4. Second, a SISP order (the "**SISP Order**"), substantially in the form which appears in 3Motion's Motion Record, approving amongst other things, the sale and investment solicitation process (the "**SISP**") attached as an appendix to the First Report and authorizing the Proposal Trustee to implement the SISP;
5. Third, an Order approving the key employee retention arrangement made between 3Motion and its CEO, Reed Hanoun ("**RH**") whereby RH was terminated as an employee and released from his non competition and non solicitation obligations and then retained by 3Motion as a consultant to assist 3Motion and the Proposal Trustee with its interim operations, SISP, and restructuring, without prejudice to the ability of RH to participate in a non-arms length bid and to assist arms length bidders for and buyers of the assets; and
6. Fourth, an Order further to Section 279 of the BIA appointing the Proposal Trustee as the foreign representative of this proceeding for purposes of making an application for recognition of same under Chapter 15 of the US Bankruptcy Code and to seek such other interim and other relief as may be available to 3Motion under the laws of the United States of America ("**USA**") and the States composing same, including without limitation under

the laws of the State of Delaware (the USA and the States composing same are variously herein as the “US”, and the “**United States**”); and further thereto, an Order requesting the aid of assistance of the courts of the US including the US bankruptcy courts and the courts of the State of Delaware, in enforcing the stay of proceedings which arose as a result of this proceeding and otherwise giving effect to this order and other orders made in this proceeding.

PART II - FACTS

A. Background

7. 3Motion is a privately held corporation, incorporated pursuant to the laws of Ontario with its headquarters located in Oakville, Ontario. 3Motion operates as a technology and artificial intelligence company.¹

8. 3Motion’s primary business activities include developing its own proprietary technology to analyze and process intricate human motion data from various video sources. This technology can then be integrated into 3Motion’s customers’ products and services, which once done, gives its customers access to valuable data insights previously obtainable only through expensive motion capture labs and complex wearable suits and sensors. 3Motion’s primary technology that achieves the foregoing is known as the 3DNeuroNet Engine, and combines computer vision, artificial intelligence and machine learning all in one platform to deliver activity-specific data. 3Motion’s technology has applications in various fields

¹ Affidavit of Reed Hanoun affirmed on September 29, 2025 at para 3 (“**Hanoun Affidavit**”), 3Motion’s Motion Record (“**MR**”), Tab 2.

including health technology, occupational and workplace safety, and sports performance enhancement and training.²

9. 3Motion is currently insolvent with a total creditors list of approximately \$4.3 million, excluding disputed litigation claims. It has initiated this Proposal Proceeding with the support of its ultimate shareholders in order to stabilize the business enterprise, protect the viability of the business, implement a sales process to maximize returns to stakeholders, and develop a proposal to distribute the proceeds thereof to its creditors.³

10. The primary cause of 3Motion’s financial difficulties has been the exhaustion of its cash resources. In particular, the expense of defending a lawsuit commenced in the United States by a large US company called VelocityEHS Holdings, Inc (“**Velocity Litigation**”) has been a significant financial burden on 3Motion. In addition, the Velocity Litigation has diverted management time away from growing the business and securing new investment. As a result, 3Motion has experienced a significant decline in revenue starting 2024, which in addition to the cash drain from the Velocity Litigation, is also depleting cash flow. 3Motion went from a profit in 2023 of \$566,000 to a loss of \$\$1.23 Million in 2024, and its accumulated deficit increased from \$3,774,326 in 2023 to \$5,004,484 in 2024 as well. The negative income has continued in 2025.⁴

The Seven Main Heads of Relief

- (i) *Authorization of the DIP Term Sheet and DIP Charge*

² Hanoun Affidavit at para 6, MR, Tab 2.

³ Hanoun Affidavit at para 5, MR, Tab 2.

⁴ Hanoun Affidavit at paras 23-32, MR, Tab 2.

11. As required by the BIA, 3Motion prepared a cash flow and the Proposal Trustee prepared a report on same and it was duly filed within the 10 days provided by the BIA (the “**Cash Flow**”), a copy of which is attached to the First Report.⁵
12. The Cash Flow suggests that 3Motion could operate through the restructuring process with the projected receipts and disbursements. That said, the forecast leaves little room for error. Accordingly, out of prudence, the Company is seeking approval of a DIP facility, which will be available if required to support working capital and the SISP.⁶
13. To back stop the cash flow requirements of 3Motion during the Proposal Process, West Tech, in its capacity as the proposed lender under the DIP Term Sheet (the “**DIP Lender**”), has offered to make available to 3Motion a debtor-in possession loan in the maximum amount of \$750,000.00 (the “**DIP Loan**”) to fund operations and the cash shortfall anticipated in the Extended Cash Flow.⁷
14. The terms of the DIP Term Sheet are reasonable and in line with prevailing insolvency practices, and the proposed borrowings thereunder are appropriate in the circumstances and sufficient to fund 3Motion’s cash flow needs through to the end of the extension period sought on the within motion.⁸

(ii) *Granting of the Administrative Charge*

⁵ First Report of Proposal Trustee dated September 29, 2025 (“**First Report**”).

⁶ Hanoun Affidavit at para 34, MR, Tab 2.

⁷ Hanoun Affidavit at para 54, MR, Tab 2.

⁸ Ex. I, Hanoun Affidavit, MR, Tab 2.

15. 3Motion requests the granting of a first-ranking Administration Charge in the amount of \$500,000 to ensure payment of the fees and expenses of each of 3Motion's legal counsel, the Proposal Trustee and the Proposal Trustee's legal counsel, and any fee incurred by any third-party sales agent engaged by the Proposal Trustee, 3Motion seeks the Administration Charge, which is to rank in priority to all security, trusts (whether statutory or otherwise), encumbrances and claims on the property assets and undertaking of 3 Motion excepting the DIP Charge.⁹
16. The Administration Charge is reasonable in the circumstances. The continued services of the professionals are critical to the progress and success of these Proposal Proceedings and the SISP and, without such charge, the foregoing professionals are unlikely to continue in their capacities in support of these Proposal Proceedings.¹⁰

(iii) Granting of the D&O Indemnity and D&O Charge

17. 3Motion is seeking the D&O Indemnity for possible liabilities that may be incurred by the directors and officers after the filing date. As well, to secure the D&O Indemnity, 3Motion is seeking the granting of a third-ranking Directors' Charge in the amount of \$150,000, secured by a charge against 3Motion's property, assets and undertakings, with the exception of the DIP Charge and the Administration Charge (the "**D&O Charge**").¹¹
18. Granting the D&O Indemnity and D&O Charge is reasonable in the circumstances my staying on as director provides an interim operating and governance structure for 3Motion

⁹ Hanoun Affidavit at para 39, MR, Tab 2.

¹⁰ Hanoun Affidavit at para 40, MR, Tab 2.

¹¹ Hanoun Affidavit at para 41, MR, Tab 2.

that allows the Proposal Process to be carried out, and sale transactions to be completed, which will benefit the stakeholders. Providing coverage for the risk of unpaid statutory claims that accrue while I am staying on in this role is a reasonable trade off. I would not be willing to stay on without that protection.¹²

19. As well 3Motion has a D&O Insurance Policy.¹³ The D&O Charge sought requires that RH first have recourse to the D&O Insurance Policy if it provides coverage before being reimbursed out of the D&O Charge. At the same time, the D&O Charge sought provides that the insurer does not subrogate to the D&O Charge if it pays out a claim.¹⁴

(iv) *Approval of the SISP and Enhanced Powers of the Proposal Trustee*

20. The following is a summary of the SISP¹⁵:

- (a) the SISP contemplates a dual track process, which will allow for the acceptance of bids for investments and restructuring proposals, as well as bids to acquire the business and assets of 3Motion (the “**Opportunity**”);
- (b) the Proposal Trustee will administer the SISP;
- (c) as soon as reasonably practicable, the Proposal Trustee will prepare a list of potentially interested parties for participation in the SISP and will provide them with a ‘teaser’ to participate in the SISP;

¹² Hanoun Affidavit at para 42, MR, Tab 2.

¹³ Ex. J, Hanoun Affidavit, MR, Tab 2.

¹⁴ Hanoun Affidavit at para 43, MR, Tab 2.

¹⁵ Ex. K, Hanoun Affidavit, MR, Tab 2.

- (d) all participants will be required to execute a non-disclosure agreement and disclose indirect and direct principals of the participant;
 - (e) any party executing a non-disclosure and confidentiality agreement will be invited to review a virtual data room including the salient details of the business and assets of 3Motion and to submit non-binding expressions of interest;
 - (f) the Proposal Trustee will review the expressions of interest and invite select parties to submit binding letters of intent in the form of a completed agreement of purchase and sale;
 - (g) all offers must be, and all transactions will proceed, on an “as is, where is” basis and will not be conditional on diligence or financing;
 - (h) whether or not the offer is for all of the assets or just one or some of the 6 technology stacks that comprise the 3Motion business, the offer must assign a separate price for each technology stack to which the bid applies so that the offers can be meaningfully compared by the Proposal Trustee
 - (i) the final bid (or bids) will be selected and executed;
 - (j) the Proposal Trustee will then seek Court approval of the selected transaction (or transactions); and
 - (k) the transaction(s) shall close forthwith after Court approval.
21. So as to facilitate the SISP and enable to Proposal Trustee to monitor and facilitate the Proposal Proceeding and any restructuring initiatives in respect of 3Motion’s business, 3Motion is

requesting that the authority and power of the Proposal Trustee be enhanced, as set out in the draft Order given that West Tech is controlled by some of the existing investors in 3Motion and is planning to offer other existing investors a chance to participate in West Tech. Hence it is not at arm's length. Moreover, 3Motion, in consultation with the Proposal Trustee, has taken certain steps to ensure that the SISP Process is advanced in the first 30 days of the Proposal Process.¹⁶

(v) *Approval of the KERP*

22. In order for RH to provide vital assistance through the Proposal Process as 3Motion's CEO, RH's employment agreement dated November 28, 2019 ("**Employment Agreement**")¹⁷, including the noncompetition and non-solicitation clauses contained therein, was terminated post-filing by 3Motion by way of a termination agreement ("**Termination Agreement**")¹⁸. This triggered RH's severance entitlement under the Employment Agreement which will become an unsecured claim in the Proposal Process.¹⁹

23. On or about September 3, 2025, RH entered into a new consulting agreement with 3Motion ("**Consulting Agreement**").²⁰

24. 3Motion is seeking the Court's approval of the Termination Agreement and Consulting Agreement.

(vi) *Granting of the Foreign Representative and Judicial Assistance Order*

¹⁶ Hanoun Affidavit at paras 48-49, MR, Tab 2.

¹⁷ Ex. L, Hanoun Affidavit, MR, Tab 2.

¹⁸ Ex. M, Hanoun Affidavit, MR, Tab 2.

¹⁹ Hanoun Affidavit at para 50, MR, Tab 2.

²⁰ Ex. N, Hanoun Affidavit, MR, Tab 2.

25. 3Motion requests that the court appoint the Proposal Trustee as foreign representative for that purpose as well pursuant to section 279 of the BIA, and that the court make an order requesting the assistance of courts in the United States in recognizing the Proposal Proceeding and the stay of proceedings which was triggered by 3Motion filing the NOI on September 3, 2025 and in otherwise assisting to give full effect in the United States to Orders made in this proceeding.²¹
26. Recognition of the proceeding in the United States (“U.S.”) is important (i) as 3Motion has US intellectual property, US customers and contracts, and U.S receivables, and as well (ii) to halt the Delaware Litigation against 3Motion, and (iii) to give purchasers of 3Motion assets through the SISP a good root of title immune from attack in the U.S.²²

(vii) *Extension of Time to File a Proposal*

27. The stay of proceedings imposed on the filing of 3Motion’s NOI will expire on October 2, 2025.²³
28. In order to commence and advance the SISP, 3Motion is seeking an extension of time to file a proposal for 45 days to and including November 14, 2025. In order to allow enough time for the transaction to close after the selection of a successful bidder, 3Motion anticipates seeking an additional extension of the time to file a proposal.²⁴

²¹ Hanoun Affidavit at para 52, MR, Tab 2.

²² Hanoun Affidavit at para 53, MR, Tab 2.

²³ Hanoun Affidavit at para 59, MR, Tab 2.

²⁴ Hanoun Affidavit at para 60, MR, Tab 2.

29. Without the present requested extension, 3Motion will not be in a position to carry out the SISP or to make a viable proposal to creditors, and will become automatically bankrupt after the expiry of the current stay on October 2, 2025. That would worsen the position of the stakeholders as a sale in a sale process conducted in a going concern context is likely to produce better results than a sale in a liquidating bankruptcy.²⁵
30. 3Motion does not consider that any creditor will be materially prejudiced if the stay extension is granted. The extension is supported by 3Motion, its shareholders, its DIP Lender, and the Proposal Trustee.²⁶
31. If the extension sought is granted, and the SISP process is successful in sourcing bidders for the business or parts thereof who close their transactions, 3Motion would be able to make a viable proposal to its creditors for the distribution of the proceeds.²⁷

PART III - ISSUES

32. The issues on this motion are whether to grant the Initial Order and the SISP Order, including more particularly as follows:
- (a) Whether to authorize the DIP Term Sheet and grant the DIP Charge;
 - (b) Whether to grant the Administration Charge;
 - (c) Whether to grant the D&O Indemnity and D&O Charge;
 - (d) Whether to approve the SISP and enhanced powers of the Proposal Trustee;
 - (e) Whether to approve the KERP;
 - (f) Whether to grant the Foreign Representative and Judicial Assistance Order; and

²⁵ Hanoun Affidavit at para 61, MR, Tab 2.

²⁶ Hanoun Affidavit at para 62, MR, Tab 2.

²⁷ Hanoun Affidavit at para 63, MR, Tab 2.

- (g) Whether to grant the extension of time to file a proposal.

PART IV - LAW AND ARGUMENT

A. The DIP Term Sheet and DIP Charge Should be Approved

33. The Court has authority under section 50.6(1) of the BIA to authorize the DIP Term Sheet and DIP Charge, subject to a consideration of the factors in section 50.6(5) of the BIA.²⁸
34. Having regard to those factors, The DIP Term Sheet and the DIP Charge should be approved for the following reasons:
- (a) The Cash Flow suggests that 3Motion could operate through the restructuring process with the projected receipts and disbursements. That said, the forecast leaves little room for error. Accordingly, out of prudence, 3Motion is seeking approval of a DIP facility, which will be available if required to support working capital and the SISP;
 - (b) The DIP Term sheet contemplates that the DIP Lender may also submit a bid for some or all of the assets of 3Motion in its SISP process, and permits the DIP Lender to credit bid its DIP Loan and any other secured debt owed to the DIP Lender;
 - (c) The DIP Term Sheet is conditional on the Court granting an order, on terms acceptable to the DIP Lender, which, among other things, grants the DIP Charge on the property assets and undertaking of 3 Motion, which shall rank in priority to all other security, trusts (whether Statutory or otherwise), encumbrances and claims on the property assets and undertaking of 3 Motion; and
 - (d) 3Motion believes that the terms of the DIP Term Sheet are reasonable in the circumstances and should be approved. In the absence of the DIP Loan, 3Motion will not be able to conduct the SISP and will be forced to shut down the business and commence a liquidation of their assets, resulting in the loss of value and jobs, which would be detrimental to all of 3Motion's creditors and stakeholders.

²⁸ BIA, ss. 50.6(1) and (5); *Colossus Minerals Inc. (Re)*, 2014 ONSC 514 at [para 3](#).

B. The Administration Charge Should be Granted

35. Section 64.2 of the BIA provides jurisdiction to grant a super-priority charge for the purpose of securing the fees and expenses of a trustee, its legal advisors and 3Motion's legal advisors. The Administration Charge should be granted for the following reasons:

- (a) the proposed services by the beneficiaries of the Administration Charge are essential both to a successful proceeding under the BIA as well as for the conduct of the SISP; and
- (b) the quantum of the proposed charge is appropriate given the complexity of the applicant's business and of the SISP, both of which will require the supervision of the Proposal Trustee.

C. The D&O Indemnity and D&O Charge Should be Granted

36. The Court has authority to grant a charge under s. 64.1 of the BIA relating to indemnification of directors. The D&O Charge should be granted for the following reasons:

- (a) the D&O Charge is necessary to secure the D&O Indemnity;
- (b) the continued involvement of RH as director is critical to a successful SISP or any proposal under the BIA; and
- (c) the Proposal Trustee has stated that the D&O Charge is reasonable and supports the D&O Charge.

D. The SISP Should be Approved

37. The SISP was developed with the assistance of the Proposal Trustee and with input from West Tech.

38. The Court has the authority to approve any proposed sale under s. 65.13(1) of the BIA subject to consideration of the factors in s. 65.13(4).

39. At this time, 3Motion's seeks approval of the proposed SISP. The SISP should be approved for the following reasons:
- (a) the SISP is necessary to determine whether a sale or investment transaction is available that would be more advantageous to 3Motion and its stakeholders compared to other alternatives. In these circumstances, a sales process is not only reasonable but also necessary;
 - (b) as set out in paragraph 39 of the draft Order, the Court is not approving any bid at this time. The successful bid will require court approval, and the proposed draft Order is expressly made without prejudice to any interested person's ability to oppose the approval of a successful bid; and
 - (c) the Proposal Trustee supports the proposed SISP.
40. In *Colossus Minerals Inc. (Re)*, Wilton-Siegel J. approved a SISP in a proposal proceeding under the BIA, citing similar considerations as those noted above.²⁹
41. The enhanced authority and powers of the Proposal Trustee as set out in paragraph 10 of the draft Order will ensure the impartial administration of the SISP.
42. Moreover, DIP Lender and 3Motion agree that granting the Proposal Trustee certain enhanced authority and powers, as set out in the draft Order will assist the Proposal Trustee to more efficiently administer the SISP and monitor 3Motion's business operations during the course of the Proposal Proceeding, all for the general benefit of stakeholders. The Proposal Trustee consents to and supports the enhancement of its authority as set out in the draft Order.

²⁹ [*Colossus Minerals Inc. \(Re\)*](#), 2014 ONSC 514 at para 22; see also Endorsement of Justice Kaufman at Appendix A in In the Matter of the Notice of Intention to Make a Proposal of OEM Automotive Solutions Inc. et al, court file no. BK-33-03025642.

E. The KERP Should be Approved

43. KERPs have been approved time and time again in proposal proceedings under the BIA.³⁰

The KERP should be approved for the following reasons:

- (a) the Termination Agreement and the new Consulting Agreement have been approved by the Proposal Trustee;
- (b) RH's retention will harmonize the SISP process with the enhancement to value obtainable by the CEO assisting West Tech and other bidding groups for various of the technology stacks as described above; and
- (c) RH's retention will assist the Trustee in administering the SISP; provide governance to 3Motion to carry out the court processes, and execute transactions for 3Motion, and continue interim operations of 3Motion.

F. The Foreign Representative and Judicial Assistance Order Should be Granted

44. Section 279 of the BIA authorizes the Court to appoint a representative to handle a Canadian bankruptcy case in a foreign jurisdiction. The representative is appointed for the specific purpose of seeking recognition in a foreign jurisdiction. This allows for the orderly handling of assets and liabilities located outside of Canada.

45. 3Motion is seeking an Order pursuant to section 279 of the BIA appointing the Proposal Trustee as the foreign representative of this proceeding for purposes of making an application for recognition of same under Chapter 15 of the US Bankruptcy Code and to seek such other interim and other relief as may be available to 3Motion under the laws of the USA.

³⁰ See In the Matter of *The Body Shop Canada Limited*, 2024 ONSC 3882 [para 24](#); *Danier Leather Inc. (Re)*, 2016 ONSC 1044 at [paras 72-78](#).

G. Extension of Time for 3Motion to File a Proposal Should be Granted

46. The Court has authority to grant such relief under section 50.4(9) of the BIA. 3Motion's request for an extension of the stay until November 14, 2025 to file a proposal should be granted for the following reasons:

- (a) 3Motion is acting in good faith and with due diligence, with a view to maximizing value for the stakeholders, in seeking authorization for the SISP;
- (b) the extension of the stay is necessary for 3Motion to undertake the SISP;
- (c) There is no material prejudice likely to result to creditors from the extension of the stay;
- (d) 3Motion's cash flows, with the support of the loan under the DIP Term Sheet, will enable 3Motion to meet their financial obligations; and
- (e) the Proposal Trustee supports the requested relief.

H. Expanded Powers of the Proposal Trustee

47. The expanded powers of the trustee are appropriate as the management may be involved with groups attempting to buy the assets. The order gives the Proposal Trustee some of the powers of a "super-monitor" to deal with that and keep the process independent.
48. That is an established solution favoured for this issue in CCAA and proposal proceedings and the order sought is modelled, including on this issue, after orders previously issued by this Honourable Court in proposal proceedings.

PART V - ORDER REQUESTED

49. For the reasons set out above, 3Motion respectfully request that the Court grant the requested orders.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Date: September 30, 2025

CBesant

**Chris Besant
GARDINER ROBERTS LLP**

SCHEDULE “A”

LIST OF AUTHORITIES

1. *Colossus Minerals Inc. (Re)*, 2014 ONSC 514
2. Endorsement of Justice Kaufman at Appendix A in *In the Matter of the Notice of Intention to Make a Proposal of OEM Automotive Solutions Inc. et al.*, Court File No. BK-33-03025642
3. *In the Matter of The Body Shop Canada Limited*, 2024 ONSC 3882
4. *Danier Leather Inc. (Re)*, 2016 ONSC 1044

SCHEDULE “B”
RELEVANT STATUTES

Bankruptcy and Insolvency Act, RSC 1985, c B-3

Extension of time for filing proposal

50.4 (9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

Order — interim financing

50.6 (1) On application by a debtor in respect of whom a notice of intention was filed under section 50.4 or a proposal was filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the debtor’s property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the debtor an amount approved by the court as being required by the debtor, having regard to the debtor’s cash-flow statement referred to in paragraph 50(6)(a) or 50.4(2)(a), as the case may be. The security or charge may not secure an obligation that exists before the order is made.

Factors to be considered

50.6 (5) In deciding whether to make an order, the court is to consider, among other things,

- (a) the period during which the debtor is expected to be subject to proceedings under this Act;

- (b) how the debtor's business and financial affairs are to be managed during the proceedings;
- (c) whether the debtor's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable proposal being made in respect of the debtor;
- (e) the nature and value of the debtor's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the trustee's report referred to in paragraph 50(6)(b) or 50.4(2)(b), as the case may be.

Security or charge relating to director's indemnification

64.1 (1) On application by a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the property of the person is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the person to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer after the filing of the notice of intention or the proposal, as the case may be.

Priority

64.1 (2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

Restriction — indemnification insurance

64.1 (3) The court may not make the order if in its opinion the person could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

Negligence, misconduct or fault

64.1 (4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross

negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

Court may order security or charge to cover certain costs

64.2 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

- (a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;
- (b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

Priority

64.2 (2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

Individual

64.2 (3) In the case of an individual,

- (a) the court may not make the order unless the individual is carrying on a business; and
- (b) only property acquired for or used in relation to the business may be subject to a security or charge.

Restriction on disposition of assets

65.13 (1) An insolvent person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or

provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Factors to be considered

65.13 (4) In deciding whether to grant the authorization, the court is to consider, among other things,

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the trustee approved the process leading to the proposed sale or disposition;
- (c) whether the trustee filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Authorization to act as representative of proceeding under this Act

279 The court may authorize any person or body to act as a representative in respect of any proceeding under this Act for the purpose of having them recognized in a jurisdiction outside Canada.

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C., 1985, C. B-3, AS AMENDED

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 3MOTIONAI INC. IN THE CITY OF
MISSISSAUGA, IN THE PROVINCE OF ONTARIO**

***ONTARIO*
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

FACTUM OF 3MOTIONAI INC.

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